

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5237 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MODI HIMATLAL CHIMANLAL

Versus

DEESA NAGAR PALIKA

Appearance:

MS KUSUM M SHAH for Petitioner

MS. PARMAR, A.G.P. for the respondents

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 05/10/96

ORAL JUDGEMENT

The petitioner by this petition challenges the order passed by the learned Collector, Banaskantha dated Nil whereby the rent of the municipal land came to be enhanced from 0.35 ps per Sq. mtr. to Rs. 1650/-.

2. The case of the petitioner is that at Deesa there are seven shops belonging to Panjarapole, constructed on the municipal land. He has taken shop No. 4 on lease from Panjarapole at Deesa. He is carrying on his

business of radio repairing in that shop. The shop is facing West. On the East of his shop there is an open land belonging to the respondent-Nagrapalika. As the business was expanding the petitioner was experiencing hardships because of shortage of space. He was having the shop admeasuring 8'x8'. As that shop was falling short to him he requested the respondent Nagarpalika to let him the land on the back of his shop. On 26.10.1983 the Administrator of the respondent Nagarpalika decided to let the land on the back of the shop of the petitioner admeasuring 8'x8' passing resolution No. 268. The rent thereof was fixed at 0.35ps per sq. mtr. i.e. Rs. 2.08 ps. per month for the whole of the land. The petitioner was then informed by a letter dated 3.11.1983. A rent note was then executed and the petitioner was put into the possession of the land let to him. The petitioner then went on paying the rent regularly as agreed upon. By the time elected Body took over the charge. It moved the Collector to set aside the resolution dated 26.10.1983. On 14.9.1984 the Collector issued a notice calling upon the petitioner to show cause why the lease granted in his favour should not be cancelled by invoking the powers under Section 258 of the Gujarat Municipalities Act as the land let was the street land. On receipt of the notice the petitioner on 24.9.1984 replied mentioning that the Collector had no power to cancel the lease or the resolution passed in that regard and the land in question was not the street land. The Collector thereafter held that the lease was granted for 11 months only, the period of lease had expired, and so the petitioner had therefore to give the possession back. He therefore thought it fit not to stay the implementation of the resolution passed by the Nagarpalika; but finding the rate of rent being meagre considering the development in the area and the then market price of the land, he passing necessary order No. 437 to 443/85 dated nil enhanced the rent to Rs. 1650/without mentioning whether it was per month, or for the total period of lease i.e. 11 months. Against that order the petitioner preferred a revision application before the Government. The learned Revenue Secretary (Appeal) was of the view that the revision was not falling within his competence and therefore, he sent the papers back to the petitioner. The petitioner has, therefore, preferred this petition challenging the legality and validity of the order of the Collector Banaskantha.

3. It has been contended on behalf of the petitioner that it was beyond the power of the Collector to invoke his powers under Section 258 of the Gujarat

Municipalities Act and enhance the rent fixed by the Nagarpalika. It is also submitted that the Collector did not give any finding about the nature of the land namely the same was street land or not though that issue was raised by the Nagarpalika. The order of the Collector is arbitrary, unjust and bad in law.

4. If the action taken by the Municipality is already over and there remains nothing to be done in pursuant to the resolution passed, the Collector can have no jurisdiction to invoke power under Section 258 of the Gujarat Municipalities Act, 1963. Whatever is necessary has been done and completed in pursuance of the order /resolution of the Municipality, and the Collector under Section 258 of the Gujarat Municipalities Act exercising powers, cancels the order or resolution of the Municipality; it would be unjust and improper. If pursuant to resolution possession of the property is given, it would not be open to the Collector to direct under Section 258 to recover the same back. Even if the acts done under the resolution of the Municipality are found to be illegal the Municipality itself can modify or cancel the resolution or restore the legal position. In short, the Collector under Section 258 of the Gujarat Municipalities Act does not get powers to consider the legality and validity of the resolution. Such position of law is made clear by this Court in the case of RAGHAVBHAI ARJANBHAI VS. AMRELI NAGARPALIKA & ANS. 35(2) [1994(2)] G.L.R. 1117.

5. In the case on hand, after the Administrator passed the resolution to let the land for 11 months, put the petitioner into the possession of the land and recovered the rent as and when every month the same was tendered. The lease-period of 11 months is also over. It seems the Collector in view of such development pursuant to the resolution, rightly thought is wise to abstain from staying the implementation and operation of the resolution. There is nothing on record going to show that act of letting the land is causing or likely to cause injury or annoyance to the public or to lead to a breach of the peace. For the last more than 11 months the petitioner is using and occupying the land let and Municipality received no complaint from public about injury or annoyance. It seems, the Collectory also could collect no material in this regard. He could see that the ingredients of Section 258 were wanting and hence it seems he rightly drop the idea of cancelling or suspending the resolution.

6. However, the Collector enhanced the rent upto

1650/- without clarifying whether it was monthly or of the whole period of 11 months. Whatever may be the case, the question posed before me is whether it is open to the Collector to enhance the rent of the Municipal Properties exercising the powers under Section 258 of the Gujarat Municipalities Act? It seems the Collector found that without due consideration the land was let at a negligible rate of rent. The land was in business locality. The town was fast developing town. In the area where land is situated, the market value of the land is Rs. 2000/- per sq.mt. No doubt in my view the local Body has to guard it's interest. It's no act should cause undue financial loss. On the other end its duty is to promote common good as well as business and commerce also. It has therefore to study the situation and strike the balance. It can grant reasonable concession, and not undue or unjust concession. It cannot always have obsession of financial gain or unjust profit. If the local Body considering pros and cons fixes reasonable rent and grants reasonable concession; the Collector cannot have obsession of undue huge profit on his abovestated consideration. Even if the Collector finds that local Body has acted recklessly or has shown undue favour, or has a reason to suspect corrupt practice, it cannot under Section 258 of the Gujarat Municipalities Act enhance rent as the said power cannot be spelt out from any of the word used therein. That section does not vest the Collector with power to enhance rent. Even if it is assumed for a while that the word "injury" appearing in Section 258 envisages financial loss, it was not open to the Collector to enhance the rent as whatever was required to be done pursuant to the resolution had already commenced and completed. The stage to take preventive measures had already passed. In any case the act of the Collector of enhancing the rent is not in consonance with Section 258 of the Gujarat Municipalities Act which is invoked.

7. Whether the land let is a street land was the point raised in order to justify cancellation of the resolution; but the point being foreign to the subject matter, I will not deal with the same. The only point raised for determination is whether the Collector has a right to enhance the rate of rent fixed by the local Body i.e Municipality; and same is hereinabove dealt with.

8. The Administrator in the absence of elected Body was at the relevant time in charge of the administration of the Municipality of Deesa. He passed the resolution dated 26.10.1983 and let the land to the petitioner. He was, therefore, working in lieu of the elected body, and

in his official capacity he was enjoying prior to his taking over the charge as administrator. His decision was the decision of the local Body, and the Collector also examined the resolution invoking Section 258 of the Gujarat Muni. Act. The contention that as administrative head of the administrator, the Collector reviewed and modified the resolution is therefore without any substance.

9. At this stage it is also submitted on behalf of the respondents Nos. 2 and 3 that the period of lease of 11 months has expired. The municipality has fixed meagre rent and has to undergo heavy loss and therefore also the order of the Collector is required to be maintained. At the cost of repetition it may be stated that the Collector does not have power under Section 258 of the Act to enhance the rent and therefore the order of the Collector cannot be maintained, but if Nagarpalika is of the view that because of meagre rent already fixed, its financial interest is being injured, it would be open for the Nagarpalika to take appropriate action of eviction available under the relevant provisions of the Act in force, as by now the contractual term of 11 months is over.

10. For the aforesaid reasons, the petition requires to be allowed. The same is allowed accordingly and the order passed by the Collector on 26.10.1983, a copy of which is produced at Annexure D at page 14 is hereby quashed and set aside. No cost in the circumstances of the case. Rule is made absolute to the above extent.

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